

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA, ) No. CR 05-00125 PJH  
12 Plaintiff, )  
13 v. ) STIPULATED ORDER RE RELEASE  
14 KENNETH KELLY, )  
15 Defendant. )  
\_\_\_\_\_  
)

17 The Court issues this order temporarily releasing Kenneth Kelly on his own recognizance for  
18 the following reasons:

19 1. Kelly is charged in a two-count indictment with possession and receipt of child  
20 pornography. Previously, he was released, but after he failed to comply with the terms of  
21 supervision by (among other things) possessing new child pornography, the magistrate court  
22 remanded him into custody. He now is in the custody of the United States Marshals Service.

23        2. According to the Marshals Service, Kelly apparently suffered a heart attack. He is in the  
24 intensive care unit at Valley Memorial Hospital in Pleasanton, California, and he is unconscious  
25 and on a respirator. His medical condition is not likely to improve significantly in the immediate  
26 future. Because Kelly is in custody, the Marshals Service has posted deputy United States  
27 marshals at the hospital around the clock to maintain his custody status. The Marshals Service  
28 has requested that Kelly be temporarily released so that the deputies may relieved of the

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1 responsibility and the unnecessary cost of watching an unconscious patient. According to the  
2 Marshals Service, and based on his medical condition, Kelly currently does not pose a danger to  
3 the community or a flight risk.

4 3. According to defense counsel, Kelly's sister Ann Kelly has a power of attorney, but  
5 because he is in custody, she cannot obtain any information about his medical condition.  
6 According to the Marshals Service, once Kelly is released from custody, the hospital should  
7 provide Ms. Kelly with medical information. Defense counsel has agreed to keep the Court, the  
8 United States, and Pretrial Services informed about Kelly's medical condition on an ongoing  
9 basis and to provide a copy of this order to Ann Kelly.

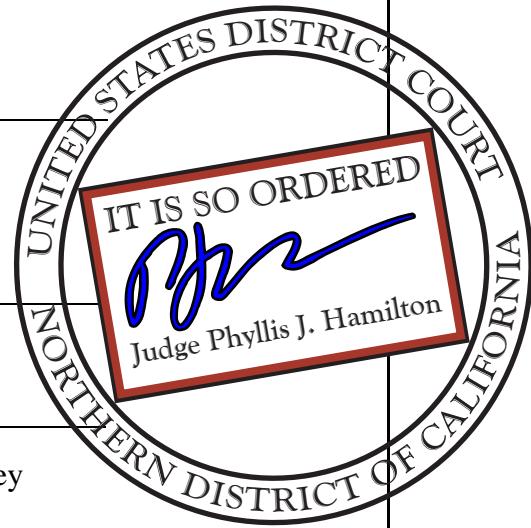
10 4. The parties have agreed that a further bail hearing should be set before Magistrate Judge  
11 Maria-Elena James on Thursday, January 17, 2008, at 10 a.m., and they have confirmed that  
12 Judge James and Pretrial Services are available that day. At the hearing, the parties will address  
13 whether Kelly should continue on release, and if so, whether further conditions (such as having  
14 his sister serve as custodian) should be imposed. Finally, the parties can address how to inform  
15 Kelly of the terms of his release if he regains consciousness.

16 Accordingly, the Court temporarily releases Kelly on his own recognizance. Because Kelly  
17 is unconscious and cannot be informed of any conditions of release, the Court sets a further  
18 status hearing before Judge James on January 17, 2008, at 10 a.m. At that hearing, the Court  
19 can address whether Kelly should continue on release and what conditions should apply.

20 IT IS SO ORDERED.

21 DATED: January 9, 2008

PHYLLIS J. HAMILTON  
United States District Judge



22 STIPULATED:

23 DATED: \_\_\_\_\_

/s  
ELIZABETH FALK  
Attorney for Kenneth Kelly

24 DATED: \_\_\_\_\_

/s  
LAUREL BEELER]  
Assistant United States Attorney